

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VIRAL DRM LLC

Plaintiff.

V.

MARYNA LIETUCHEVA

**Defendant.**

Case No. 3:23-cv-04300-JSC

# **ORDER TO SHOW CAUSE REGARDING VIRAL DRM'S STANDING**

Plaintiff Viral DRM LLC brings copyright infringement claims against Defendant Maryna Lietucheva alleging she downloaded and copied Viral DRM's copyrighted materials from YouTube, and then re-uploaded infringing versions of its copyrighted media content to her YouTube channel Extreme Weather & Natural Disasters. This is one of several related copyright infringement actions. *See* Case Nos. 23-5045, 23-5594, 23-5977, 23-6261, 23-6598, 24-731, 24-733, 24-739, 24-746, 24-747. After Defendant failed to respond to the Amended Complaint, Viral DRM moved for entry of default, which the Clerk granted, and now moves for entry of default judgment. (Dkt. Nos. 94, 98.<sup>1</sup>) At the hearing on Viral DRM's motion for default judgment, the Court raised an issue regarding Viral DRM's standing to bring the copyright infringement claims and directed Viral DRM to submit a copy of its license with the copyright holders. (Dkt. No. 104.) Having considered the supplemental submission, the Court ORDERS Viral DRM to SHOW CAUSE as to its standing to enforce the copyrights at issue.

Section 501(b) of the Copyright Act specifies who has standing to sue for infringement: “The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the

<sup>1</sup> Record Citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the document.

1 [registration] requirements of section 411, to institute an action for any infringement of that  
2 particular right committed while he or she is the owner of it.” 17 U.S.C. § 501(b). Section 106  
3 sets forth an “exhaustive list” of those exclusive rights. *Silvers v. Sony Pictures Entm’t., Inc.*, 402  
4 F.3d 881, 887 (9th Cir. 2005) (en banc) (citing 17 U.S.C. § 106). These include:

5 the rights “to do and to authorize” others to do six things with the  
6 copyrighted work: to reproduce the work, to prepare derivative works  
7 based upon the work, to distribute copies of the work, to perform the  
work publicly, to display the work publicly, and to record and perform  
the work by means of an audio transmission.

8 *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, 795 F.3d 997, 1002 (9th Cir. 2015) (quoting 17  
9 U.S.C. § 106). In *Minden*, the Ninth Circuit held “either an *assignment* (which transfers legal title  
10 to the transferee) or an *exclusive license* (which transfers an exclusive permission to use to the  
11 transferee) qualifies as a ‘transfer’ of a right in a copyright for the purposes of the Act.” *Minden*,  
12 795 F.3d at 1003 (emphasis in original). In contrast, a “‘nonexclusive license’ does not constitute  
13 a ‘transfer of copyright ownership’ and therefore cannot confer standing to assert an infringement  
14 claim.” *DRK Photo v. McGraw-Hill Glob. Educ. Holdings, LLC*, 870 F.3d 978, 983 (9th Cir.  
15 2017) (citing 17 U.S.C. § 101).

16 Viral DRM’s other copyright-based claims for violation of 17 U.S.C. § 512(f) and 17  
17 U.S.C. §§ 1201, 1202, respectively, also have limitations on who may bring a claim. See 17  
18 U.S.C. § 512(f) (authorizing claims for damages for material misrepresentations by the “copyright  
19 owner or copyright owner’s authorized licensee”); 17 U.S.C. § 1203 (“Any person injured by a  
20 violation of section 1201 or 1202 may bring a civil action in an appropriate United States district  
21 court for such violation”).

22 This action is brought by Viral DRM “a syndicator of award-winning videographic content  
23 created by talented videographers.” (Dkt. No. 71 at ¶ 14.) According to the Amended Complaint,  
24 “Viral DRM was the exclusive licensee of the Works at issue in this case” and “Viral DRM  
25 registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. §  
26 411(a).” (*Id.* at ¶¶ 38, 39.) The Registration Certificates attached to the Amended Complaint,  
27 however, show the works at issue are registered to “Michael Brandon Clement.” (Dkt. No. 71-2.)  
28 According to Mr. Clement’s declaration in support of the motion for default judgment, he is a

1 principal and one of the owners of Viral DRM LLC. (Dkt. No. 98-2 at ¶ 1.) Mr. Clement attests  
2 “[a]ll the works are exclusively licensed to Viral DRM for distribution and syndication pursuant to  
3 written agreements that provide Viral DRM with the necessary rights to sue for the infringements  
4 at issue in this case.” (*Id.* at ¶ 8.)

5 In response to the Court’s inquiry at the hearing, Viral DRM filed its “Exclusive Copyright  
6 Management Agreement” purportedly with the videographer holding the copyright.<sup>2</sup> (Dkt. No.  
7 105-3.) Not so. The copyright registrations for the work at-issue in this action are held by  
8 Michael Brandon Clement, but the Agreement offered here is between Viral DRM and “Reed  
9 Trimmer.” (*Compare* Dkt. No. 71-2 *with* Dkt. No. 105-3.) However, because Viral DRM filed  
10 the Agreement with Clement in the related actions, *see, e.g.*, Case No. 23-5594, Dkt. No. 70-3,  
11 and the agreements are otherwise identical, the Court will consider it here, but ORDERS Viral  
12 DRM to file the correct license for this action within seven days of the date of this Order. As  
13 relevant here, the copyright holder—referred to as a “Content Creator”—grants Viral DRM:

14 1. Grant of Exclusive Agency Rights. Content Creator hereby grants to  
15 VDRM the exclusive agency rights to manage and administer any content submitted by  
16 Content Creator to VDRM (the “Works”), including but not limited to the right to search  
17 for copyright infringements of the Works, to register copyrights for the Works with the  
18 United States Copyright Office; to authorize VDRM’s attorneys to negotiate settlements,  
file takedown notices pursuant to the Digital Millennium Copyright Act or otherwise  
file claims on behalf of the Content Creator in an effort to enforce the copyrights in and  
to the Works; Content Creator grants VDRM exclusive agency rights to display, store,  
transmit, and distribute Works as needed to fulfill obligations set forth in this  
agreement.

19 (Dkt. No. 105-3 at ¶ 1; Case No. 23-5594, Dkt. No. 70-3 at ¶ 1.) The Content Creator otherwise  
20 retains all copyright and ownership rights in the work. (*Id.* at ¶ 3.)

21 \_\_\_\_\_  
22 <sup>2</sup> Viral DRM requests leave to file the Agreement under seal because its agreements with the  
videographers “are confidential with its photographers, not only to protect Viral DRM’s assets and  
terms, but also to protect the photographer’s private information.” (Dkt. No. 105.) A party  
seeking to file documents under seal “bears the burden of overcoming [the] strong presumption” in  
favor of public access to court records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,  
1096 (9th Cir. 2016). “[C]ompelling reasons must be shown to seal judicial records attached to a  
dispositive motion.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th  
Cir. 2006); *see also Koninklijke Philips Electronics, N.V. v. KXD Tech., Inc.*, 347 F. App’x 275,  
276 (9th Cir. 2009) (stating default judgment is “case dispositive”). While the Court agrees there  
are compelling reasons for sealing portions of the Agreement, this does not include the  
Agreement’s title or paragraph 1 of the Agreement which is discussed in the publicly filed  
Clement Declaration. (Dkt. No. 107-1 at ¶ 3.) So, the motion to seal is GRANTED except as to  
these portions of the document.

1       In *Minden*, the photography stock company “entered into agency agreements with its  
2 contributing photographers under which the photographers authorized Minden to license and sell  
3 certain photographs to third parties.” *DRK Photo*, 870 F.3d at 983-84 (citing *Minden*, 795 F.3d at  
4 999–1000). “Importantly, in those licensing agreements, the photographers agreed to appoint  
5 Minden ‘as sole and exclusive agent and representative with respect to the Licensing of any and all  
6 uses of [specified photographs].’” *DRK Photo*, 870 F.3d at 984 (quoting *Minden*, 795 F.3d at  
7 1000). “The key to determining whether Minden’s agency agreements conferred a nonexclusive  
8 or exclusive license [] was not whether the photographers retained some fractional right but  
9 instead that the photographers promised ‘that Minden, *and only Minden*, will have the power, as  
10 the photographers’ licensing agent, to authorize third parties to reproduce, distribute, and display  
11 the photographs.’” *Id.* (quoting *Minden*, 795 F.3d at 1005) (emphasis in original)).

12       The Agreement here gives Viral DRM the “exclusive agency right to manage and  
13 administer any content.” (Dkt. No. 105-3 at ¶ 1; Case No. 23-5594, Dkt. No. 70-3 at ¶ 1.)  
14 Managing and administering content is not among the exhaustive list of exclusive rights which  
15 confer ownership under 17 U.S.C. § 106. The Agreement provision giving Viral DRM “the  
16 exclusive agency rights to display, store, transmit, and distribute Works *as needed to fulfill*  
17 *obligations set forth in this agreement,*” also does not confer exclusive ownership rights. (Dkt.  
18 No. 105-3 at ¶ 1; Case No. 23-5594, Dkt. No. 70-3 at ¶ 1 (emphasis added).) Giving Viral DRM  
19 the rights necessary to enforce the videographer’s copyright, is not the same as the exclusive right  
20 to “authorize third parties to reproduce, distribute, and display the photographs” required to have  
21 standing to bring a copyright infringement action. *Minden*, 795 F.3d at 1005; *see also Silvers*, 402  
22 F.3d at 884 (“The right to sue for an accrued claim for infringement is not an exclusive right under  
23 § 106.”). Unlike the agreement in *Minden*, the Agreement does not give Viral DRM the exclusive  
24 right to authorize third parties to reproduce, distribute, and display the copyrighted video.

25       Accordingly, Viral DRM is ORDERED TO SHOW CAUSE as to how it has standing to  
26 bring the copyright infringement claims at issue here including its standing to bring claims under  
27 17 U.S.C. §§ 512(f), 1202(a), (b). Viral DRM shall file a written response to this Order by  
28 January 6, 2025.

1 Within seven days of this Order Viral DRM shall file the correct licensing agreement.

2 Viral DRM's administrative motion to seal is GRANTED IN PART and DENIED IN  
3 PART as set forth in this Order. (Dkt. No. 105.)

4 This Order disposes of Docket No. 105.

5 **IT IS SO ORDERED.**

6 Dated: December 9, 2024

  
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JACQUELINE SCOTT CORLEY  
United States District Judge